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RECEIVED BY E-MAIL *5/7*

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAMAR MANEESSE,

Appellant.

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Is a search of an arrested student's backpack — conducted by a school resource officer who is also a law enforcement officer, in the presence of a school official, and pursuant to the officer's official duties at the school — authorized by law where the search is based on individualized, reasonable grounds to believe that a crime is being committed at the school?

2. Did a school resource officer have reasonable grounds to search a student's backpack where the officer saw the backpack lying a foot away from a student who was holding marijuana and a vial smelling of marijuana in a school restroom, the backpack had a padlock on it, and the student falsely told the officer that he did not have keys to the lock?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Jamar Maneese was charged with possession of less than 40 grams of marijuana and carrying a dangerous weapon at school. CP 1-2; RCW 69.50.4014; RCW 9A1.280. Maneese unsuccessfully moved to suppress an air pistol seized from inside his backpack. CP 25-29; RP 3-6, 124-26. Maneese was adjudicated guilty by a court commissioner based on stipulated facts. CP 5-7; RP 131-33. A superior court judge subsequently denied Maneese's motion for revision. CP 30-33.

On appeal, Maneese argued that the pistol should have been suppressed because the search of his backpack was conducted by a school resource officer (SRO) who also was a Bellevue police officer. He argued that the officer's dual status transformed the situation into a normal search rather than a school search, such that the officer needed a warrant or exigent circumstances to search. BOA, at 8-12. Maneese also claimed that, even if the SRO was acting as a school official, he lacked reasonable grounds to search. BOA, at 12-14. The Court of Appeals affirmed, holding that the reasonable grounds standard applied to the SRO's search and that the search was supported by reasonable grounds. State v. J.M., 162 Wn. App. 27, 40, 255 P.2d 828 (2011).

2. SUBSTANTIVE FACTS

In February, 2009, Officer Michael Fry was working as a School Resource Officer for Robinswood High School and Middle School in Bellevue, Washington. CP 31; RP 36. Fry had been an SRO for about 12 years. RP 36. Fry's salary was paid by the Bellevue Police Department, but the Department was partially reimbursed for Fry's services by the Bellevue School District (District). CP 31; RP 39-40; Ex. 4. To clarify Fry's role with the school, the District Superintendent sent a letter to the Bellevue Police Department appointing Fry as an SRO and designating him as a District school official. RP 39-44, 82; Ex. 4.

As an SRO, Fry assisted Robinswood in discipline matters and also exercised arrest powers. CP 31. Fry's primary duties were to maintain a safe, secure, and orderly learning environment on school grounds for students, teachers, and staff. RP 36-38, 43, 104. Fry enforced school district policies and rules, and he sought to prevent or intervene in incidents that occurred on or near the campus. RP 36-38. Fry sometimes assisted in searching students. RP 94-95. Part of maintaining discipline included locating and removing illegal substances from campus. RP 97. Fry and the Dean of Students, Phyllis Roderick, noted the seriousness of drug problems at school. They recalled five or six incidents in the last year where illegal substances were found. RP 37, 89-90. Fry handled nonschool-related calls "very rarely" while working as an SRO. RP 39.

On February 4, 2009, during a routine check of the school's bathroom, Fry saw a student, Maneese, standing near a sink. CP 31.¹ Maneese was holding a vial in one hand, a bag of marijuana in the other hand, and he was standing a foot away from a backpack. CP 31; RP 45-47. The vial smelled strongly of marijuana. Fry seized the marijuana and the vial, picked up the backpack, and ordered Maneese to come with him to the office of the Dean of Students, Phyllis Roderick, so that Roderick

¹ Fry knew Maneese and had spoken to him about the duties of an SRO. RP 85.

could address school discipline matters and Maneese's violation of the school district's drug policy. CP 31; RP 45-47, 82. Fry did not immediately arrest Maneese.

At the office, Fry, Roderick, and Maneese sat down. RP 47-48, 71. Fry put the backpack on Roderick's desk and then on the floor next to Fry and Maneese. RP 47, 84. Fry informed Roderick of what he had seen in the bathroom, and Maneese confirmed Fry's account. RP 93. Fry told Maneese that he was under arrest and called for a backup police officer. CP 31; RP 49-50, 71-72. Fry then sought to search Maneese's backpack, but the zippers were padlocked. CP 31; RP 49-51. Despite the lock, Fry was able to partially unzip the backpack, move items around, and remove a few items, including a tennis shoe. CP 31; RP 50-53, 95-96. When Fry asked Maneese for the keys to the lock, Maneese claimed that he forgot them at home. CP 31; RP 53.

Fry found it suspicious that Maneese would bring a locked backpack to school and not have a key. RP 51-54, 74-75. This, combined with the fact that Maneese had been holding a bag of marijuana and a vial, led Fry to believe that additional contraband was in the backpack. Fry handcuffed Maneese for safety reasons, searched him, and found the padlock keys in Maneese's jacket pocket. CP 31; RP 53-54. Fry unlocked the pack and found at the bottom a Beretta replica air pistol. CP 31;

RP 54-55, 77. Shortly thereafter, Bellevue Police Officer Finney arrived at the school and transported Maneese to the police precinct. RP 56-57. Maneese was booked at the Bellevue Police station, his guardian was notified, and he was transported to the Youth Detention Center "because of another issue." RP 57.

C. ARGUMENT

Maneese argues that Fry's search was unconstitutional because Fry acted in his capacity as a law enforcement officer rather than as a school official and thus needed exigent circumstances or a warrant to search. This argument fails. When Fry searched Maneese's backpack on school property, he acted as a school official and thus needed only reasonable grounds to search the backpack. Fry had reasonable grounds to conduct the search because (1) he found Maneese holding marijuana and a vial smelling of marijuana while Maneese stood only a foot away from his backpack, (2) the backpack had a padlock on it, and (3) Maneese falsely said that he did not have keys to the backpack.

1. THE GREATER FLEXIBILITY AFFORDED TO SCHOOL SEARCHES STEMS FROM THE UNIQUE NEEDS OF SCHOOL OFFICIALS IN A SCHOOL SETTING; THIS NEED JUSTIFIES SEARCHES BASED ON REASONABLE GROUNDS RATHER THAN PROBABLE CAUSE.

Neither the Fourth Amendment nor the Washington Constitution prohibit all warrantless searches. The Fourth Amendment requires that searches be reasonable, and the Washington Constitution requires a search to be conducted under "authority of law." U.S. CONST. amend IV; WASH. CONST. art. I, § 7. Whether a search is constitutionally permissible often hinges on the context. For example, while most governmental searches require a warrant, courts have allowed warrantless searches in airports, courthouses, prison cells, or probationers' residences.²

This Court also has recognized that when searches are conducted in schools, a different legal standard applies. See, e.g., State v. McKinnon, 88 Wn.2d 75, 81-82, 558 P.2d 781 (1977); York v. Wahkiakum School Dist. No. 200, 163 Wn.2d 297, 308-09, 178 P.3d 995 (2008). Although students have constitutional rights against illegal searches, students within a school have a lower expectation of privacy than members of the general population. York, 163 Wn.2d at 303, 308;

² See Jacobsen v. City of Seattle, 98 Wn.2d 668, 672, 658 P.2d 653 (1983) (citations omitted) (airport and courthouse searches); Matter of Personal Restraint of Benn, 134 Wn.2d 868, 909, 952 P.2d 116 (1998) (citation omitted) (prison cells); State v. Campbell, 103 Wn.2d 1, 22, 691 P.2d 929 (1984) (citation omitted) (parolees and probationers).

see also New Jersey v. T.L.O., 469 U.S. 325, 341, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985). Simply put, school children do not have the same rights as adults. This Court has recognized that school officials must be free "to maintain order and discipline" in the school environment in order to carry out their duties of both (1) educating children in an orderly academic setting; and (2) protecting the safety of the children in their care. McKinnon, 88 Wn.2d at 80-81.³

Educating hundreds of children in an academic setting can be daunting. In T.L.O., the Court noted how difficult it had become to maintain a proper school environment with drug and violent crimes in schools, and held that "the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult." 469 U.S. at 339.

School authorities have an obligation to maintain discipline over students. It is recognized that, when large numbers of teenagers are gathered together in such an environment, their inexperience and lack of mature judgment can often create hazards to each other. Parents, who surrender their children to this type of environment, have a right to expect certain safeguards.

³ "If school children had all the same rights as adults, the administration of our schools would creak to a halt under the twin burdens of due process and probable cause. For example, a teacher-ordered school detention would cease to be an effective disciplinary measure and instead be converted into a lawsuit for tortious imprisonment." York, at 330 (J.M. Johnson, J., concurring).

It is in the high school years particularly that parents are justifiably concerned that their children not become accustomed to antisocial behavior, such as the use of illegal drugs. The susceptibility to suggestion of students of high school age increases the danger. Thus, it is the affirmative obligation of the school authorities to investigate any charge that a student is using or possessing narcotics and to take appropriate steps, if the charge is substantiated.

In short, a high school is a special kind of place in which serious and dangerous wrongdoing is intolerable. The state, having compelled students to attend school and thus associate with the criminal few – or perhaps merely the immature and unwise few – closely and daily, thereby owes those students a safe and secure environment.

People v. Dilworth, 169 Ill.2d 195, 212, 661 N.E.2d 310 (1996) (citing 4 W. LaFare, Search & Seizure §10.11(a), at 809-10 (3rd ed. 1996)).

In Washington, it is constitutionally the “paramount duty of the state” to provide for the education of minors. WASH. CONST. art. IX, § 1. To advance this constitutional imperative, the Legislature has given school districts the statutory authority and responsibility to maintain order and discipline in schools and to protect students’ health and safety. See, e.g., RCW 28A.150.240(2) (listing statutory responsibilities for student discipline and safety). And the duty of school officials to protect students is even more critical because school attendance is compulsory. See RCW 28A.225.010. If children are compelled to attend school, administrators must have the flexibility to ensure a safe environment.

Thus, school searches are more readily authorized by law because of the magnitude of school officials' constitutional and statutory duties to educate and protect students and the serious societal problems and obstacles that school officials must face.

2. SEARCHES IN A SCHOOL SETTING DO NOT REQUIRE A WARRANT AND NEED NOT BE SUPPORTED BY PROBABLE CAUSE.

Based on the concerns outlined above, the Supreme Court has held that a search warrant and probable cause are ill-suited to the school environment and has reasoned that maintaining security and order in schools requires a "certain degree of flexibility" in school disciplinary procedures. T.L.O., 469 U.S. at 339-40. The Court reasoned that requiring a school official to obtain a warrant before searching a student suspected of a school infraction or a crime "would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools." Id. at 340.

This Court's decisions are similar. In State v. McKinnon, this Court held that maintaining discipline in schools "oftentimes requires immediate action and cannot await the procurement of a search warrant based on probable cause." 88 Wn.2d at 81. In Kuehn v. Renton School District No. 403, although this Court disallowed suspicionless searches of personal luggage of student band members, it held that such searches

would be permissible based on a reasonable belief of wrongdoing.
103 Wn.2d 594, 598-99, 694 P.2d 1078 (1985). And in York, this Court held that a school district's blanket policy allowing random and suspicionless drug-testing of student athletes violated article I, section 7. 163 Wn.2d at 307-10. But this Court stressed that its narrow holding "should in no way contradict" its decisions allowing warrantless searches of students, because students have a "lower expectation of privacy *because of the nature of the school environment*." Id. at 308-09 (citing, e.g., T.L.O., 469 U.S. at 341; McKinnon, 88 Wn.2d at 81) (italics added).

The reasons for exempting school officials from the warrant requirement are sound. If school officials were required to get a warrant every time they suspected a violation of school rules or criminal activity, the resulting delay and distraction would have a deleterious impact on school officials. School officials likely would be drawn into the process of obtaining or assisting an officer in obtaining a warrant. While waiting for a warrant to be drafted, reviewed, and signed, school officials would have to monitor the suspect in an office, neglecting their other duties to the scores or hundreds of other students in their care.

The difficulty and delay in obtaining warrants also would affect students because the suspect student likely would be detained in a school office and thereby miss class. Such delay unfairly harms students who are

innocent. Under the current reasonableness standard, if school officials search swiftly and discover nothing incriminating, students can be returned promptly to class with minimal disruption to their learning.

A delay also potentially jeopardizes the safety and well-being of other students. If school officials have reasonable grounds to suspect drug-dealing, possession of weapons, or even plots to harm students at school, officials must be provided the flexibility to quickly investigate rather than wait for a potential warrant.

Finally, setting a lower threshold to search — reasonable grounds instead of probable cause — ensures that potential crimes and safety threats can be neutralized. As the revision court noted here, Fry lacked probable cause to search the backpack. CP 32. If a probable cause standard applied to schools, an official could not have gotten a warrant and thus could not have checked Maneese's backpack for drugs, guns, ledgers of sales, or other contraband that might affect the school environment. Requiring searches to be based on probable cause would impinge on the “substantial need of teachers and administrators for freedom to maintain order in their schools.” T.L.O., 469 U.S. at 341.

For all these reasons, this Court should adhere to the standard articulated in T.L.O. and McKinnon and determine a school search is

constitutional if supported by individualized suspicion rising to the level of reasonable grounds to search.

3. A SEARCH INITIATED AT SCHOOL BY AN SRO IS STILL A SCHOOL SEARCH, EVEN IF THE SRO IS ALSO A LAW ENFORCEMENT OFFICER.

Maneese argues that SRO Fry needed a warrant to enter his backpack because Fry was a police officer, thus transforming the search into a criminal investigation, rather than a school matter. He argues that the search would be lawful only if exigent circumstances existed or if a warrant was obtained. This argument should be rejected because it artificially divorces the search from its purposes and from the surrounding circumstances. The reasons justifying a school-search warrant exception apply to all wrongdoing arising in schools, and the school remains concerned with maintaining discipline and order among its students, even if the offending student is arrested. The arrestee is still a student, even after arrest, so the school's obligation to discipline remains.

No Washington case directly addresses whether the warrant requirement applies to police officers working as SROs. But other jurisdictions have squarely addressed this issue and have held that the warrant requirement does not apply; a school search is still a school search, even if performed by a law enforcement officer. See, e.g., In re S.F., 414 Pa. Super. 529, 531, 607 A.2d 793 (1992) (applying reasonable

suspicion standard to search by plainclothes police officer for Philadelphia School District); Wilcher v. State, 876 S.W.2d 466, 467 (Tex.Ct.App. 1994) (applying reasonable suspicion standard to search by police officer for Houston school district); S.A. v. State, 654 N.E.2d 791, 795 (Ind. Ct. App. 1995) (applying reasonable suspicion standard to police officer employed by Indianapolis Public Schools Police Department).

In People v. Dilworth, the Illinois Supreme Court held that a police officer assigned to a school as a resource officer was to be considered a "school official" for the purpose of assessing the legality of a search on school grounds. 169 Ill.2d 195, 661 N.E.2d 310 (1996). The police officer in Dilworth was assigned to the school by the city's police department, he had an office on school grounds, his primary purpose on the school campus was to prevent criminal activity, and if he discovered a crime he had authority either to arrest the student or assign the student to detention. Dilworth, 661 N.E.2d at 312-14. Although the SRO was a police officer, the Illinois Supreme Court held that the legality of the search should be reviewed under the same standards applicable to school officials. The Court reasoned that the unique nature of a public school environment and the State's strong interest in protecting its students required that the legal analysis for schools should apply. Dilworth, 661 N.E.2d at 320.

This Court, too, should reject any distinction between a non-commissioned school security officer and a police officer SRO. The fulfillment of the school's duties should not focus "on the insignificant factor of who pays the officer's salary," but instead "on the officer's function at the school and the special nature of a public school." CP 33 (citing In re William V, 111 Cal. App. 4th 1464, 1471, 4 Cal. Rptr. 3d 695, 699-700 (2003)); see also Dilworth, 661 N.E.2d at 316-18.

Moreover, distinguishing between commissioned officers and private security guards "might force school districts to employ private security guards rather than certified police officers who may have superior training, which would hardly enhance protection of the students' Fourth Amendment rights." In re William V, 111 Cal. App. 4th at 1471; In re Randy G., 26 Cal.4th 556, 568-69, 110 Cal. Rptr. 516 (2001); see also Dilworth, at 316-18. Alternatively, school officials, principals, or teachers — who also likely would not be as well-trained as police officers in searches and seizures — might feel compelled to search students if SROs lacked the requisite authority without a warrant. Again, this would not likely serve the students' needs or the school's needs.

This Court should hold that, as long as a police officer is working at a school at the behest of school officials to enforce school rules and prevent crime at the school, searches conducted by SROs who are

commissioned police officers are authorized if supported by reasonable grounds, not probable cause.⁴

The Bellevue School District appointed Fry to be an SRO and a school official. CP 31; RP 36-44, 82; Ex. 4. Fry searched Maneese in his normal role as an SRO; he was not an ordinary patrol officer summoned to the school as a law enforcement officer. CP 31; RP 36-44. Although Fry had probable cause to arrest Maneese immediately after seeing him in the bathroom holding marijuana, Fry did not do so. Instead, he brought Maneese to the office of the Dean of Students to address the apparent violations of school rules. CP 31; RP 46-47, 82. This chain of events underscores Fry's role in the school and the nature of the search. This was a school search, conducted by a school official, in furtherance of school policies. The fact that Maneese ultimately was arrested, or that Fry was an SRO, does not change the analysis.

⁴ A more difficult situation is presented, however, when an outside law enforcement officer comes onto school grounds and initiates a search unrelated to maintaining school discipline and order, for example, to investigate a burglary in the neighborhood. Under such circumstances, a warrantless search would be authorized only if an exigency were shown. Numerous hypothetical situations along such lines can be imagined but the facts of this case are clearly different, as Fry was clearly assigned to the school and maintaining school order in this case.

**4. SCHOOL RESOURCE OFFICER FRY HAD
REASONABLE GROUNDS TO SEARCH
MANEESSE'S BACKPACK.**

Maneese claims that even if Fry was acting as a school official, Fry lacked reasonable grounds to search Maneese's backpack. Maneese argues that there were no circumstances justifying an immediate search of the backpack and that Fry should have sought a warrant to conduct the search. This claim fails. Fry did have reasonable grounds to conduct the search. The search was justified at its inception and reasonable in scope because (1) Fry discovered Maneese holding marijuana and a vial smelling of marijuana while standing only a foot away from the backpack, (2) the backpack was padlocked, justifiably arousing Fry's reasonable suspicion of contraband, and (3) Maneese falsely claimed that he did not have keys to the lock.

In determining whether school officials had reasonable grounds for a search, this Court and other Washington courts have considered the following relevant factors as articulated in McKinnon:

- the student's age, history, and school record;
- the prevalence and seriousness of the problem in the school;
- the probative value and reliability of the information justifying the search; and
- the exigency to make the search without delay.

McKinnon, 88 Wn.2d at 81; State v. Slattery, 56 Wn. App. 820, 825, 787 P.2d 932 (1990).

A search by school officials is considered reasonable if it is justified at its inception and is reasonably related in scope to the circumstances that justified the interference in the first place. T.L.O., 469 U.S. at 341; State v. B.A.S., 103 Wn. App. 549, 553, 13 P.3d 244 (2000). Under ordinary circumstances, a school official's search will be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated either school rules or the law. T.L.O., 469 U.S. at 341-42. A search will be reasonable in scope when the measures adopted are "reasonably related" to the search's objectives and not excessively intrusive in light of the student's age and gender and the nature of the infraction. Id. at 342. By focusing the analysis on a search's reasonableness, students' interests are invaded "no more than necessary to achieve the legitimate end of preserving order in the schools," yet schools still are permitted to regulate students' conduct "according to the dictates of reason and common sense." Id. at 343.

The McKinnon factors justify the search of Maneese's backpack. First, Maneese was a high school student. RP 44. The record did not reflect his age or school record.⁵ Second, both Fry and Dean of Students Roderick noted the prevalence and seriousness of the drug problem at

⁵ The parties agreed not to offer ER 404(b) evidence as to any history of prior contacts between Maneese and Officer Fry. RP 7.

school, and recalled five or six incidents in the last year where illegal substances were found. RP 37, 89-90. Third, the probative value and reliability of information justifying the search was high. The search was not prompted by information from a third party. Rather, Fry personally saw Maneese holding marijuana and a vial that smelled of marijuana while standing only a foot away from his backpack. CP 31; RP 44-47. In addition, Fry reasonably suspected Maneese's backpack had contraband because Maneese had a padlock on the backpack and then falsely claimed that he did not have keys to the lock. CP 31; RP 49-55.

Nevertheless, Maneese argues that the backpack search was unreasonable because there was no exigency requiring immediate access to its contents. Maneese is incorrect. No authority requires that, in order for a search to be reasonable, all of the McKinnon factors be met.

Moreover, in addition to the general exigency outlined by T.L.O. and McKinnon in justifying warrantless school searches — the need to give schools freedom to swiftly maintain discipline and order on school grounds — there was an exigency to make the search without delay here. First, the school needed to know if Maneese's crimes involved other students in the school. Given that Maneese was holding a bag of marijuana and a vial that smelled of marijuana, it would have been reasonable to believe that Maneese might have been dealing drugs in

school and that Maneese's backpack could have contained evidence of his drug transactions. In Slattery, evidence of drug dealing was found as a result of a school search. School officials acted on a student tip that Slattery was selling marijuana in the school parking lot. 56 Wn. App. at 821-22. In a search of Slattery's car, officers found a pager as well as a notebook with names and dollar amounts written inside. Id.

Second, the school needed to know how to discipline Maneese. Although the school knew that Maneese had been arrested, it could not know how long he would remain in custody; nor did it know that he possessed a weapon. In many cases, student suspects can be booked, arrested, and then quickly released from custody to their guardians. In the meantime, schools need to make quick and comprehensive disciplinary decisions, including whether the student should return to the school. A prompt search of Maneese's backpack furthered that goal.

Lastly, Maneese suggests that because his backpack was locked he had a heightened expectation of privacy in its contents. He is mistaken; a lock does not make an expectation objectively reasonable. As shown above, students have a diminished expectation of privacy in school. The student cannot raise the objective expectation simply by manifesting a higher subjective expectation. A lock on a backpack may signal a *desire* for privacy, but that does not make this desire objectively reasonable.

Similarly, locking a bag bound for airport screening or a border search does not thwart reasonable efforts to detect bombs or drugs. See, e.g., United States v. Cortez-Rocha, 394 F.3d 1115, 1120 (9th Cir. 2005) (border patrol searches of vehicular compartments permissible even if compartments are locked; a contrary rule would "remove the significant deterrent effect of suspicionless searches and encourage the use of spare tires and other locked containers as a means of smuggling.").

Because Fry's search of Maneese's backpack was justified at its inception and reasonable in scope, this Court should hold that Fry's search was valid.

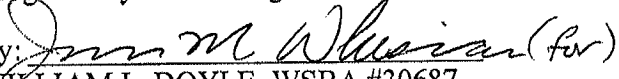
D. CONCLUSION

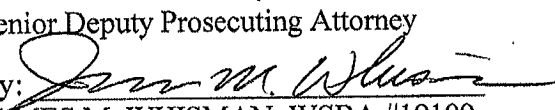
For the foregoing reasons, this Court should affirm Maneese's conviction of Carrying a Dangerous Weapon at School.

DATED this 21ST day of November, 2011.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorney for the petitioner, Christopher Gibson @ gibsonc@nwattorney.net and to Attorney for Amicus Curiae, Douglas B Klunder @ klunder@usermail.com, containing a copy of the Supplemental Brief of Respondent, in STATE V. JAMAR MANESEE, Cause No. 86203-6, in the Supreme Court, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name

Done in Seattle, Washington

Date 11/21/11